

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-291-C - ORDER NO. 2004-422
SEPTEMBER 30, 2004

IN RE:	Application of Sail Networks, Inc. for a)	ORDER GRANTING
	Certificate of Public Convenience and)	CERTIFICATE
	Necessity to Provide Facilities-based/UNE-P)	
	Local Exchange and Interexchange)	
	Telecommunications Services and Flexible)	
	and Modified Alternative Regulations.)	
)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Sail Networks, Inc. (“Sail”, the “Applicant” or the “Company”) for authority to provide local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business service offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2003) and the Rules and Regulations of the Commission.

By letter, the Commission’s Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the

areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Sail provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Sail agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on January 7, 2004, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. Sail was represented by Scott Elliott, Esquire. Frank Betancourt, President and Chief Operating

Officer of Sail, appeared and testified on behalf of the Company. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

Mr. Betancourt presented testimony to demonstrate the Company's financial, managerial, and technical ability to provide the telecommunications services for which authority is sought in South Carolina. The sole witness also presented testimony regarding his background and experience in business and telecommunications as well as that of the other executives of Sail. Mr. Betancourt's testimony and exhibits filed with the Company's petition evidence that the management team of Sail has extensive experience in the telecommunications industry and that the Company is on sound financial footing to begin operations in South Carolina.

Regarding the services the Company seeks to provide in South Carolina, the testimony reveals that Sail proposes to provide local exchange telecommunications services via the unbundled network platform ("UNE-P") and through resale, and resold interexchange telecommunications services for the direct transmission and reception of voice and data between locations throughout the State of South Carolina. The Company intends to provide a diverse array of local exchange services including basic business and residential services, custom-calling features, and toll free calling services. The Company intends to market its services to both commercial and residential customers in South Carolina. The Company states that it will provide 911 and enhanced 911 calling to all services. Service is to be provided twenty-four (24) hours per day, seven (7) days per week. As Sail will be operating as a reseller of local exchange and long distance service, the Company's traffic will initially be routed entirely over the network of its underlying

carriers. The testimony reveals further that Sail will at all times provide and market services in compliance with current Commission policies. In particular, the Company is familiar with Commission Order No. 93-462 regarding resale of intraLATA telecommunications services and will attempt to comply with the terms of that Order in every respect possible. On behalf of Sail, Mr. Betancourt agreed that at all times the Company will provide interstate services in compliance with the FCC rules and regulations. Mr. Betancourt further testified that the Company intends to market its services through direct solicitation. He further stated that if the Company ever begins to market its services through telemarketers that it will abide by all rules and regulations of this Commission concerning such marketing practices.

Sail has requested waivers of certain Commission rules and regulations. Specifically, Sail has requested that it be allowed to maintain its books and records under Generally Accepted Accounting Principles ("GAAP") as opposed to the Uniform System of Accounts ("USOA"). Additionally, the Company has requested waivers of the requirements that it publish and distribute a local telephone directory under 26 S.C. Code Regs. 103-631, that it be required to file with the Commission maps of its operating area under 26 S.C. Code Regs. 103-612.2.3, and that it be required to maintain its books and records within the State of South Carolina as required by 26 S.C. Code Reg. 103-610.

Sail's customer service representatives are available to assist the Company's customers and to promptly respond to all customer inquiries. The Company's toll free number and address will be printed on customers' monthly billing statements. Mr. Betancourt testified further that the Company's customer service representatives are

prepared to respond to a broad range of service matters, including inquiries regarding the types of services offered by Sail and the rates associated with the services; monthly billing statements; problems or concerns pertaining to a customer's current service; and general service matters.

Mr. Betancourt testified that the residents of South Carolina will benefit from Sail's service and presence in South Carolina. The testimony reveals that customers in the Company's service territory will receive increased choice and heightened opportunities to obtain improved technology in their homes and businesses. Further, Mr. Betancourt opined that the granting of the certificate of authority to provide local exchange service will offer increased efficiency to the State's telecommunications infrastructure through greater reliability of services and an increase in competitive choices. The testimony reveals the Company agrees to abide by and comply with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Sail is organized as a corporation under the laws of the State of Delaware and is registered as a foreign corporation with the South Carolina Secretary of State's Office.
2. Sail is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. Sail has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that Sail's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

5. The Commission finds that Sail will support universally available telephone service at affordable rates.

6. The Commission finds that Sail will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by Sail "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. We find that the issuance of the authority requested by Sail is in the best interests of the citizens of the State of South Carolina.

9. We find that the public interest requires us to grant the waivers requested by Sail. We further find, given the nature of Sail's business plan, that strict compliance with the regulations for which Sail seeks waivers, namely the requirements (a) to publish directories pursuant 26 S.C. Code Regs. 103-631, (b) to file maps of operating areas pursuant 26 S.C. Code Regs. 103-612.2.3, and (c) to maintain books and records within the State of South Carolina pursuant to 26 S.C. Code Regs. 103-610, would produce unusual hardship for Sail.

CONCLUSIONS OF LAW

1. The Commission concludes that Sail possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services as described in its Application.

2. The Commission concludes that Sail's "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that Sail will participate in the support of universally available telephone service at affordable rates to the extent that all similarly situated carriers may be required to do so by the Commission.

4. The Commission concludes that Sail will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange services and interexchange services by Sail will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Sail to provide competitive intrastate local exchange services only to customers located in the non-rural areas of the state. The terms of the Stipulation between Sail and the SCTC are approved and adopted as a part of this Order. Therefore, any proposal to provide local telecommunications service to rural service areas is subject to the terms of the Stipulation.

7. The Commission concludes Sail's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Sail's competitive local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Sail's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to initiate an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

8. The Commission adopts a rate design for the long distance services of Sail consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997.

Under the Commission approved modified alternative regulation, the business service offerings of Sail, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to

complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Sail also.

9. With regard to the residential interexchange service offerings of Sail, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

10. With regard to residential interexchange service rates, Sail shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. Sail shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a

general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Applicant's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

11. Sail requests an exemption from the requirement that it keep certain of its financial records in accordance with the Uniforms System of Accounts. In order to provide for the efficient operation of the Applicant's business, the Commission approves a waiver and hereby permits the Applicant to maintain its records in accordance with GAAP. The Applicant is, however, required to record and maintain records specific to its business operations in the State of South Carolina and to make such records available for inspection by employees of this Commission.

12. Sail additionally requests a waiver of 26 S.C. Code Regs.103-631 requiring Sail to publish and distribute local directories. Sail has agreed to make arrangements with the incumbent LECs in the areas where the Company will do business to ensure the publication of Sail's customers numbers in the incumbent LECs' telephone directories. On this basis the Commission concludes that Sail should be granted this requested waiver.

13. Sail requests a waiver of 26 S.C. Code Regs.103-610 which requires that the Applicant keep its books and records in the State of South Carolina. As the Applicant's headquarters is located in Alpharetta, Georgia, the Commission concludes

that an exemption from this Regulation is warranted. The Applicant shall, however, make its books and records available for inspection by the Commission and shall bear any cost associated with such an inspection as a result of the Company being permitted to maintain its books and records in Georgia.

14. Sail also requests that it be exempt from the map filing requirement under 26 S.C. Code Regs. 103-612.2.3. Because the Applicant seeks approval to operate throughout the State of South Carolina, the Commission concludes that this request is warranted and hereby grants the Applicant's request.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Sail to provide competitive intrastate resold and facilities-based local exchange telecommunications services in South Carolina. The terms of the Stipulation between Sail and the SCTC are approved and adopted as a part of this Order, and therefore, any proposal by Sail to provide local telecommunications services in rural service areas is subject to the terms of the Stipulation. In addition, Sail is granted authority to provide resold intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. Sail shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Sail's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Sail's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Sail's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of Sail which are consistent with the principles and procedures established for alternative regulation of business service offerings as set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Sail, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-

997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Sail also.

4. With regard to the interexchange residential service offerings of Sail, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. Sail shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. Sail shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for

reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

6. If it has not already done so by the date of issuance of this Order, Sail shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. Sail is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's offering of interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. Sail shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Sail changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, Sail shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph four of the Stipulation and Appendix B approved by Order No. 93-462.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Sail shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the "Authorized Utility Representative Information" form which can be located at the Commission's website at www.psc.state.sc.us/reference/forms.asp to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. Sail shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Sail to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, Sail shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. Sail is required to make certain reporting filings with the Commission. Sail shall file annual financial information in the form of annual reports and gross

receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, Sail shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp. The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp.

Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp. These "CLEC Service Quality Quarterly Reports" are required to be filed within 30 days of the end of each calendar quarter.

16. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina

telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at www.psc.state.sc.us/reference/forms.asp.

17. For good cause shown, Sail is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Practices rather than the Uniform System of Accounts method.

18. For good cause shown, Sail is granted a waiver of the requirement that the Company publish and distribute a directory under S.C. Code Ann. Regs. 103-631. Sail is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.

19. For good cause shown, Sail is granted a waiver of 26 S.C. Code Regs. 103-610 which requires that the Applicant keep its books and records in the State of South Carolina. Sail shall keep its books and records at its headquarters in Alpharetta, Georgia.

Further, Sail shall make its books and records available for inspection by the Commission or the Staff upon request and shall bear any cost associated with such an inspection.

20. For good cause shown, Sail is granted a waiver of 26 S.C. Code Regs. 103-612.2.3 requiring the filing of maps of operating area.

21. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)